▶	This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 06/16/06

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
L. P.	)	
	)	**Charge No.: 2005CF0473**
Complainant,	)	**EEOC No.: 21BA42965**
	)	**ALS No.: 05-295**
and	)	
	)	
POPEYE'S CHICKEN & BISCUITS	)	
	)	
Respondent.	)	

RECOMMENDED ORDER AND DECISION

This matter comes before me on a public hearing on damages held on February 3, 2006, after the Commission entered a Default Order against the Respondent on August 24, 2005. Complainant appeared, *pro se*, and testified in her own behalf. Respondent, although duly served, did not appear. Complainant declined the opportunity for post-hearing briefs. An order permitting, and setting a schedule for, a fee petition, if applicable, was entered on March 8, 2006. No fee petition was filed within the time provided. This matter is now ready for disposition.

Consistent with public policy favoring the protection of victims of sexual harassment, Complainant is identified herein only by her initials.

Findings of Fact

The following findings of facts were derived from the record file in this case and from events and evidence presented at the public hearing on damages.

1. Complainant filed Charge Number 2005CF0473 with the Illinois Department of Human Rights (the "Department") on August 24, 2004, alleging that Respondent

sexually harassed her and reduced her hours in retaliation for reporting such conduct.

2. On August 24, 2005, the Commission entered a Default Order and referred the matter to the Administrative Law Section for a hearing on damages.

3. On October 28, 2005, an order was entered that set this matter for a status hearing on December 21, 2005.

4. On December 21, 2005, a status hearing took place. Only Complainant appeared. An order was entered that set this matter for another status hearing on January 4, 2006.

5. On January 4, 2005, a status hearing took place. Only Complainant appeared. An order was entered setting this matter for a public hearing on damages for February 3, 2006.

6. On February 3, 2006, a public hearing on damages took place. Only Complainant appeared.

7. Complainant was an employee of Respondent, Popeye's Chicken & Biscuits, 3457 W. Roosevelt Road, Chicago, Illinois 60624 from February 17, 2004 until March 11, 2005.

8. Beginning on or about July 13, 2004 and continuing through July 28, 2004, Victor Phillips, a co-worker of Complainant who worked at Respondent, engaged in two or more acts of sexual misconduct.

9. The sexual misconduct included grabbing Complainant from behind, twisting her arm and rubbing underneath her breasts with his hands while forcefully grinding his body against her.

10. Complainant considered these acts unwanted and unsolicited, and on or about July 14, 2004, reported the acts to Respondent's management, including, Shanda Lyons, LaTanya Matthews, Leslie Wilson and Herb Henderson.

11. Even after such reports, Mr. Phillips attempted to force himself on Complainant in Respondent's workplace.

12. Mr. Phillips's actions created a work environment that became hostile, egregious, outrageous, and affected Complainant's ability to perform the essential duties of her job.

13. Complainant made $5.25 per hour while working for Respondent prior to her becoming 18 years of age.

14. Complainant's hourly wage increased to $6.50 when minimum wage increased, and she was working thirty-five (35) hours per week.

15. On or about August 2, 2004, Complainant experienced a reduction in work hours by her then shift leader, Victor Phillips. Mr. Phillips reduced Complainant's number of work hours from thirty-five (35) hours per week to fifteen (15) hours per week.

16. On March 11, 2005, Complainant's last day of work, Complainant was making $6.50 per hour and working six (6) hours per week.

17. Complainant was distressed by Mr. Phillips's actions, feeling uncomfortable around everybody, especially men. As a result, Complainant sought help from a psychiatrist once a week for three (3) months.

Conclusions of Law

1. Complainant is an "aggrieved party" and Respondent is an "employer" as those terms are defined in the Illinois Human Rights Act, 775 ILCS 5/1-103(B) and 5/2-101(B).

2. The Commission has jurisdiction over the parties and the subject matter of this action.

3. In accordance with the Commission's August 24, 2005 Default Order, Respondent is in violation of the Illinois Human Rights Act that prohibits sexual harassment and retaliation.
4. Complainant has demonstrated lost wages/back pay as a result of Respondent's actions in the amount of $18,544.50.
5. Complainant is entitled to prejudgment interest in accordance with the Illinois Human Rights Act and the Commission's Procedural Rules.
6. Complainant has demonstrated emotional suffering as a result of Respondent's actions of such magnitude that she is entitled to an award of emotional distress damages in the amount of $3,500.00.
7. In light of the findings of liability against Respondent, the Commission should order Respondent to cease and desist from any sexual harassment and retaliatory conduct.

Discussion

At the hearing, Complainant introduced a document that appeared to be a printout from a search on the internet. It was not clear exactly what point Complainant was attempting to make regarding this document. However, if the point was that Respondent, as named in this case, is not the proper Respondent, there is simply not enough information from which to make any conclusions. In addition, it should be noted that Complainant has not filed a Motion to Amend the Complaint, or anything similar thereto.

Back Pay

The first element of damages to be considered is back pay. Often, a calculation of back pay can be somewhat speculative. The task is more difficult when the only evidence is the Complainant's own testimony, presented without the assistance of

counsel, and without introducing any supporting documentation. Any ambiguity in this process must be resolved in favor of a prevailing complainant and against the discriminating employer, since the employer's wrongful act gave rise to the uncertainty. **Clark v. Human Rights Comm'n**, *141 Ill. App. 3d 178, 183, 490 N.E. 2d 29, 95 Ill. Dec. 556 (1st Dist. 1986).* This principle must be rigorously followed when a respondent has failed to participate in the case in any way. **Taylor and Amerienvironmental, Inc.,** ___ *Ill. HRC Rep. ___ (2001CE1961, Feb. 23, 2004).*

I find that Complainant's own testimony, along with the facts set forth in the Charge of this case, suffice to sustain her burden. The absence of supporting evidence, however, may affect the amount of damages deemed appropriate here or an exact calculation of these damages. Complainant did testify that she possessed a W-2. Notwithstanding, she failed to produce the W-2 or any other documentation that might confirm a more precise award for back pay. Since Respondent did not appear at the public hearing, there is no evidence to refute, or clarify, Complainant's testimony. As such, this recommended opinion and decision is based on piecing together information from the Charge and Complainant's testimony at the public hearing.

From the last day of Complainant's employment with Respondent (March 11, 2005) to the date of this Recommended Order and Decision (April 3, 2006), Complainant would have been earning $6.50 per hour. She testified that prior to the sexually harassing conduct and reporting the same to Respondent, she was working thirty-five (35) hours per week. Thus, for this period of time, her back pay is $12,512.50 (35 hours times $6.50 times 55 weeks).

In addition, the Charge indicates that on or around August 2, 2004 until March 11, 2005, Complainant's hours were reduced from thirty-five (35) hours per week to six (6) hours per week, or by twenty-nine (29) hours per week. Thus, for this period of time, Complainant's back pay is $6,032.00 (29 hours times $6.50 times 32 weeks). In total,

Respondent should be ordered to pay Complainant back pay in the total amount of $18,544.50.

Respondent should also be ordered to pay Complainant interest on the back pay as contemplated by Section 8A-104(J) of the Human Rights Act (735 ILCS 5/8A-104(J)), and calculated as provided in Section 5300.1145 of the Commission's Procedural Rules.

Emotional Distress

It is apparent from the record that Complainant suffered a severe emotional reaction to the sexual harassment she suffered while employed by Respondent. The degree of emotional distress was significantly over and above that which would be expected from "the mere fact of a civil rights violation" and is therefore compensable under the Illinois Human Rights Act**. Harris and Vinylgrain Industries of Illinois**, ___ *Ill. HRC Rep. ___ (1996CA1087, Aug. 1, 2001).*

Complainant testified that after the sexually harassing incidents and because of the conduct of Mr. Phillips, she sought help from a psychiatrist. (Tr. at 8). She said "…the way the man approached me, he made me feel uncomfortable, so I was with a psychiatrist for a while." (Tr. at 8). "I went because I was uncomfortable around everybody, and mostly men because I thought that men was going to grab me the way he approached me. Because nobody ever – it felt like he was attacking me. I felt when I went outside somebody was going to attack me the same way that he did. And that's why I went to seek help." (Tr. at 9). Complainant testified that she attended sessions with the psychiatrist once a week for about three (3) months. (Tr. at 9).

Based on her testimony and Commission precedent, I find that Complainant demonstrated she experienced distress that exceeds expected, reasonable levels and is entitled to an award for emotional distress in the amount of $3,500.00

Other Relief – Cease and Desist

Although reinstatement is presumptively the relief sought and given in discrimination cases under the Illinois Human Rights Act, Complainant did not request such relief, and, under the circumstances, no such relief is recommended.

However, since a Default Order has been entered and there has been a finding of liability against the Respondent, it is recommended that Respondent be ordered to cease and desist from any sexually harassing and retaliatory conduct in the future.

Recommendation

It is recommended that the Commission:

(1) award back pay in the amount of $18,544.50;

(2) award prejudgment interest on the back pay award in accordance with the Illinois Human Rights Act and the Commission's Procedural Rules;

(3) award emotional distress damages in the amount of $3,500.00; and

(4) order Respondent to cease and desist from any sexually harassing and retaliatory conduct in the future.

HUMAN RIGHTS COMMISSION

BY: _____
REVA S. BAUCH
DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE
ADMINISTATIVE LAW SECTION

ENTERED: April 3, 2006